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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,780	07/13/2001	Robert J. Dunst JR.	076883-0268936	1823
27498	7590	06/03/2004	EXAMINER	
PILLSBURY WINTHROP LLP			MCALLISTER, STEVEN B	
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PALO ALTO, CA 94304-1114			PAPER NUMBER	

3627

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,780

Applicant(s)

DUNST ET AL.

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites "collected every nth time period", but as understood by the examiner the specification shows that the data is polled every time period, not every nth period. In examining the claims, the text was interpreted as every time period.

Claim 5 is indefinite because it appears to contradict claim 4. Claim 4 recites that data is collected every [nth] time period, but the specification appears to show polling the computers every [nth] time period to determine whether enough data is stored at the computers to download it.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The method of the rejected claims is non-statutory because it is not statutory since it recites no technological nexus (e.g., positively claimed steps as performed via a computer).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Teicher et al (5,933,813).

Teicher shows means for collecting a plurality of transaction data blocks comprising scanners or other sensors; means for constructing a temporary table and determining a calculated value each field comprising a CPU and memory; means for adding the calculated value to an existing value comprising a CPU and memory; means for determining if an alert condition exists comprising CPU and memory; and means for issuing an alert comprising CPU, memory, and screen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims XXX are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Teicher et al (5,933,813).

Teicher shows collecting a plurality of transaction data blocks. It inherently shows constructing a temporary table having a plurality of fields corresponding to a current reporting table and processing the transaction blocks to determine a calculated value since the system deals with the data via database manipulation and assigns relationships between the datafields in order to process and manipulate the data (e.g., in order to update sales figures, it is necessary to know at least the product and the sales and a relationship between the two must be assigned.) It inherently shows adding each calculated value in the temporary table to an existing value in the current reporting table, since the sales figures must be updated in order to analyze the need for promotions. It further shows determining for each item in the table if an alert condition occurs comprising for instance, low sales for an item. If so, it issues an alert comprising announcing a lower price.

Alternatively Teicher shows all elements except constructing a temporary table having a plurality of fields corresponding to a current reporting table and processing the transaction blocks to determine a calculated value; and adding each calculated value in the temporary table to an existing value in the current reporting table. However, it is

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notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to modify the method of Teicher by manipulating the data in such a manner in order to take advantage of commonly known database techniques.

As to claim 2, Teicher shows returning to the collecting step.

As to claim 3, Teicher inherently shows initializing each field before the collecting step since such a step must occur in order to provide valid collected data (e.g., sales must be set to zero at the initially in order to provide valid sales data as sales data are collected and added.); returning to the collecting step when the current period is not over; initializing when the period is over.

As to claims 4-6, Teicher shows all elements of the claim except the particular polling methodology. However, it is notoriously old and well known in the art to poll data as recited. It would have been obvious to one of ordinary skill in the art to do so in order to take advantage of existing methodologies.

As to claim 7, Teicher shows all elements of the claim.

As to claim 8, Teicher shows all elements of the claim.

As to claim 9, Teicher shows all elements of the claim including determining whether the item identified by the alert command has been blocked (since upon initial determination of an alert situation the alert is issued and a wait period is placed to determine future performance).

As to claim 10, Teicher shows issuing a page regarding the alert.

As to claim 11, Teicher shows all steps except communicating a message via email. However, to do so is notoriously old and well known in the art. It would have

been obvious to one of ordinary skill in the art send such a message in order to provide a record of the alert at the receiver's apparatus.

As to claim 12, Teicher shows all elements of the claim since a time stamp is necessary to determine the end of the waiting period and the present sale status is recorded showing that the item has been placed on promotion.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al as applied to claim 1 above, and further in view of Halperin et al (6,015,004).

Teicher shows all steps except determining whether an alert has been received; inspecting the shelf location; selecting a descriptor to describe the condition; transmitting it back; and taking corrective action. It is notoriously old and well known in the art to determine whether an alert, such as an out of stock alert has been received from an inventory tracking system. It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher by determining whether such an alert has been received in order to keep stocks supplied. Halperin shows inspecting a shelf location, selecting a descriptor to describe the condition of the location, transmitting the descriptor back to the alert device and taking corrective action. It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher in order to further facilitate maintaining of stocks.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven B. McAllister